

**DRAFT REPORT ON U.S. EPA REVIEW OF OHIO ENVIRONMENTAL PROGRAMS
EXECUTIVE SUMMARY AND OVERVIEW**

I. INTRODUCTION

Since January of 2000, the United States Environmental Protection Agency (U.S. EPA) has been conducting reviews of a number of federal environmental programs administered by the Ohio Environmental Protection Agency (OEPA) in response to a petition submitted by four Ohio environmental groups expressing concerns with Ohio environmental programs and requesting that we withdraw and/or revoke our authorization, delegation and/or approval to OEPA for certain programs. U.S. EPA conducted its reviews and is preparing a report in order to gather information and evaluate whether it is appropriate or not to initiate withdrawal and/or revocation proceedings in response to the petition.

This draft report describes U.S. EPA's preliminary conclusions based upon its investigations to date of the OEPA programs mentioned in the petition. The final report will contain U.S. EPA Region 5's recommendations on whether or not it is appropriate to initiate withdrawal and/or revocation proceedings for programs mentioned in the petition. We are releasing this draft report to the public to solicit comments for U.S. EPA to consider before it makes its determinations.

We will be holding a public availability session at (time) on (date at least 30 days after draft report is released) at (location) to explain this report. We will accept written comments until (date at least 30 days after public availability session). Comments can be sent to:

Robert Paulson (P-19J)
Office of Public Affairs
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

This report is not a final report and does not constitute a final decision on whether or not to initiate formal withdrawal or revocation proceedings with respect to any program that is the subject of the environmental groups' petition. Nor does it constitute a decision on whether or not to grant or deny the environmental groups' petition.

August 30, 2001 Draft Report on Review of Ohio Programs

II. BACKGROUND

In 1997, D. David Altman submitted and amended a petition on behalf of Ohio Citizen Action, the Ohio Environmental Council (which was later replaced by the Ohio Public Interest Research Group (PIRG)), Rivers Unlimited, and the Ohio Sierra Club asking U.S. EPA to withdraw or revoke Ohio's authorization and/or approval to administer the Clean Air Act (CAA) Title V, the Clean Water Act National Pollutant Discharge and Elimination System (NPDES) and the Resource Conservation and Recovery Act (RCRA) hazardous waste programs in Ohio based on the Ohio Audit Law.

Mr. Altman supplemented this petition on September 18, 1998, August 4, 1999, and January 27, 2000, to add allegations addressing how the OEPA was implementing its programs. The petitioners' September 18, 1998 Supplement alleged that OEPA was mishandling these three programs. Their August 4, 1999 Supplement included additional justification for petitioners' allegations regarding these implementation issues. Their January 27, 2000 Supplement/Amendment added allegations to their petition regarding several Clean Air Act programs and the RCRA Solid Waste Management Plan. The petitioners also submitted numerous affidavits in support of the petition in the summer of 2000.

As supplemented, the petition expresses concerns with Ohio environmental programs and asks U.S. EPA to withdraw and/or revoke its authorization, delegation and/or approval of OEPA's RCRA hazardous waste program and Solid Waste Management Plan; Clean Water Act National Pollutant Discharge Elimination System (NPDES) program; and Clean Air Act Standards of Performance for New Stationary Sources (NSPS), New Source Review (NSR), Prevention of Significant Deterioration (PSD), Noncompliance Penalty, and Title V programs.

Among other things, the petitioners question how OEPA addresses regulated facilities, follows up on complaints, monitors facilities, issues permits, sets standards, releases information to the public, pursues enforcement, and conducts and oversees cleanups.

III. AUDIT LAW ISSUES

On December 21, 2000, U.S. EPA denied the component of the petitions that allege legal authority deficiencies associated with the Audit Law. After lengthy discussions between U.S. EPA, the OEPA and the Ohio Attorney General's Office that involved representatives of petitioners and industry, U.S. EPA reached an understanding with OEPA on changes and interpretations to the Audit Law that addressed U.S. EPA's legal authority concerns. By statutory amendment, the State of Ohio adopted these changes, which became effective on September 30, 1998. U.S. EPA reviewed the minimum statutory and regulatory requirements for

federal environmental programs cited in the petition and concluded that the amended Audit Law

August 30, 2001 Draft Report on Review of Ohio Programs

did not form a basis for withholding or withdrawing approval or authorization of the Ohio environmental programs.

IV. IMPLEMENTATION ISSUES

In response to the allegations of program implementation issues, U.S. EPA has been conducting a comprehensive review of the Ohio environmental programs mentioned in the petition since January of 2000. The purpose of U.S. EPA's review is to determine whether cause exists to commence withdrawal and/or revocation proceedings. U.S. EPA staff have visited OEPA district and central offices, the Ohio Attorney General's Office and local air agencies, interviewed employees, and reviewed files. This report summarizes the findings from those reviews. We have organized the report into three main parts covering each of the statutes governing the programs challenged by the petition: RCRA, CWA and CAA; and a fourth part containing overviews of Ohio's legal environmental enforcement offices and criminal enforcement program.

In each part, we have summarized the petitioners' allegations and indicated our preliminary conclusions with respect to the request for withdrawal and/or revocation based on the information reviewed to date. In addition, we have identified recommendations that, if implemented, would alleviate concerns related to withdrawal criteria and obviate the need for further review.

A. CLEAN AIR ACT

U.S. EPA examined both the enforcement and permitting components of the five CAA programs the petitioners challenge: Title V permitting, Prevention of Significant Deterioration (PSD), New Source Review (NSR), Standards of Performance for New Stationary Sources (NSPS), and Noncompliance Penalties. Because each program has a different withdrawal or revocation mechanism, findings were evaluated based on the criteria for the specific programs. In its preliminary investigation of the allegations, U.S. EPA discovered various permitting and enforcement issues that may be sufficient to support commencement of withdrawal or revocation proceedings for Ohio's delegated PSD and NSPS programs and its federally approved Title V program if OEPA does not address the issues and the findings are confirmed upon further investigation. The draft report makes recommendations for program improvement to address these issues.

1. CAA Enforcement

With respect to OEPA's CAA enforcement program, the petitioners allege that OEPA has failed to properly apply environmental regulations; to inspect and monitor activities subject to regulation; to take enforcement action or to respond quickly when enforcement was needed; to seek adequate penalties; to apply Major Stationary Source (MSS) requirements; to identify

August 30, 2001 Draft Report on Review of Ohio Programs

sources subject to Maximum Achievable Control Technology (MACT); and to verify the accuracy of representations made by regulated entities. The petitioners also allege that OEPA exhibits hostility towards citizens by excluding them from the enforcement process and discussions between OEPA and regulated entities, charging them excessive fees for copying records, and ignoring or disregarding citizen complaints. Finally, petitioners allege that the Audit Privilege and Immunity Law prevents OEPA and local agencies access to information needed to document violations and thereby denies citizens access to information.

The preliminary findings from U.S. EPA's review of OEPA's CAA enforcement programs are summarized as follows:

- OEPA currently employs fewer employees than it had indicated it would need to run its air programs;
- There has been a decline in recent years in OEPA air inspections, enforcement case conclusions, complaint investigations and collected penalty amounts;
- There are potential gaps in OEPA's legal authority to implement portions of the delegated NSPS and NESHAPs programs;
- OEPA has no comprehensive system or process for identifying PSD sources that have not identified themselves to OEPA;
- OEPA does not have procedures to check the accuracy of statements made by regulated entities;
- OEPA does not have a training program that ensures a minimal level of training and consistency across the State;
- OEPA has not provided inspection strategy and compliance tracking and enforcement program plans as part of its Title V program application; and
- OEPA's Division of Air Pollution Control currently has a very high level of vacancies with no system in place to expeditiously fill those vacancies.

Although it is premature for U.S. EPA to reach definitive conclusions as to the applicability of the withdrawal criteria to these concerns, these findings, if verified upon further review, may provide a basis for the commencement of withdrawal or revocation proceedings for one or more of the CAA programs unless OEPA makes definitive commitments to address U.S. EPA's concerns. As summarized below, this report contains a number of specific recommendations.

2. CAA Permitting

With respect to permitting, the petitioners allege that OEPA has failed to correctly determine a facility's status for purposes of Title V applicability; to require permits for construction of sources; to permit sources in a timely manner; to require Lowest Achievable Emission Rate (LAER) and offset reduction; to perform analyses of alternative sites for NSR source applicants; to determine correctly a facility's Hazardous Air Pollutant (HAP) emissions; to be responsive to citizens or to make necessary information publicly available; and to collect appropriate

August 30, 2001 Draft Report on Review of Ohio Programs

permitting fees under Title V.

The preliminary findings from U.S. EPA's review of OEPA's CAA Title V permitting program are summarized as follows:

- OEPA has fallen behind the statutory and regulatory timetable for issuing final Title V permits;
- OEPA has not implemented a phase II Acid Rain program as part of its Title V permitting program;
- OEPA is not obtaining "sanitized" versions of Title V permit applications from applicants with confidential claims to forward to the public;
- OEPA is including incomplete statements of basis with draft Title V permits; and
- OEPA does not prohibit by regulation the exclusion of insignificant emission units from Title V applications and permits.

The report preliminarily concludes that if OEPA does not address these concerns, they might form a sufficient basis for initiating withdrawal proceedings. The findings that OEPA does not have a Phase II Acid Rain program, does not prohibit by regulation the exclusion of insignificant emission units, and is not obtaining sanitized versions of Title V applications are more serious in nature, and require definite action by OEPA.

In regard to the PSD program, U.S. EPA found that OEPA refused to extend the time for comment on two draft PSD permits with complex issues, and might be modifying PSD permits inappropriately through an administrative process rather than a formal public comment and review process. Unless OEPA addresses these concerns, U.S. EPA recommends further investigation and possible commencement of withdrawal or revocation proceedings for the PSD program.

3. Recommendations

The report on OEPA's air programs also contains a number of recommendations. OEPA's commitment to adopting these recommendations may obviate any need for U.S. EPA to recommend the commencement of withdrawal or revocation proceedings. The report recommends that OEPA:

- Obtain adequate resources, including personnel, to run its various delegated and approved programs;
- Better define and expand the role of the public in its regulatory activities, including potentially drafting and making publicly available a public participation strategy policy, which establishes, among other things, uniform minimum standards to be followed by all field offices for the receipt, investigation, and resolution of citizen complaints;
- Increase issuance of final Title V operating permits, properly develop and implement an

August 30, 2001 Draft Report on Review of Ohio Programs

Acid Rain Phase II program in conjunction with its Title V program, and ensure that companies sanitize Title V applications which can be provided to the public;

- Better define its policy on comment period extensions for complex PSD permit applications and discontinue its practice of administratively modifying PSD permits;
- Create a specific inspection system to identify unpermitted PSD sources;
- Describe how all sources subject to the delegated NSPS, PSD and NESHAPS programs are properly identified and permitted, submit a request to U.S. EPA for approval to sub-delegate those programs to its field offices, submit the various annual and quarterly reports required by each delegation document, and ensure that none of Ohio's laws or regulations (or OEPA's interpretation of those laws or regulations) hinder its ability to implement the various federally delegated air programs;
- Better describe its Title V inspection strategy, monitoring and enforcement tracking plans, including procedures to follow when conducting inspections and guidance as to what to document in the inspection report;
- Create a standardized training program which ensures both a minimum level of training for all OEPA and local air pollution authority employees and consistency in implementation of Ohio's delegated and approved air programs across the State; and
- Create a system to fill vacancies more quickly.

On a final note, U.S. EPA is currently reviewing all state Title V programs nationwide in accordance with a recent settlement that the federal government entered into with various environmental groups. All findings and recommendations in this report in regard to Ohio's Title V program are therefore subject to change and/or additions pending the conclusion of this ongoing review of Ohio's Title V program.

B. CLEAN WATER ACT

1. Allegations

The petitioners allege that OEPA: 1) has not been complying with the State's antidegradation requirements in siting landfills; 2) failed to develop TMDLs; 3) failed to adopt requirements consistent with the Water Quality Guidance for the Great Lakes System; 4) has not been properly regulating concentrated animal feeding operations (CAFOs); 5) has improperly granted compliance certifications under the Clean Water Act; and 7) has an inadequate NPDES enforcement program. Petitioners also allege that Ohio's antidegradation rules are deficient.

2. *Preliminary Conclusions*

With respect to the allegations concerning antidegradation, TMDLs and the Water Quality Guidance, the draft report preliminarily concludes that there is not sufficient cause to commence withdrawal proceeding with respect those issues. With respect to CAFOs, OEPA has committed to require documented CAFO dischargers to apply for NPDES permits, to develop and issue

August 30, 2001 Draft Report on Review of Ohio Programs

appropriate NPDES permits for CAFOs, and to take appropriate CWA enforcement actions in response to CWA violations committed by CAFOs. With regard to allegations regarding improper compliance certification under the Clean Water Act, states enjoy a wide latitude in determining whether to grant Section 401 certification. As to allegations that OEPA's NPDES enforcement program is inadequate, the draft report preliminarily concludes that there is not sufficient cause to commence withdrawal proceedings, providing that OEPA establishes a schedule for resolving problems with implementation of OEPA's new data management system ("SWIMS"), electronic reporting of DMRS, and accuracy of information entered into U.S. EPA's Permit Compliance System (PCS).

EPA investigated one NPDES issue not raised by petitioner. The draft report evaluates OEPA's approach to addressing "practical quantification levels" (PQLs) in situations where NPDES permits contain water quality based effluent limits (WQBELs) below the PQL. The draft report notes that Ohio's approach for addressing WQBELs that are below the quantification level is generally consistent with federal requirements.

3. CWA Recommendations

Among other things, the draft report recommends that the State provide an expedited schedule for resolving outstanding issues with SWIMS; develop and receive approval for its inspection strategy; and, with respect to PQLs, clarify that, where there is a minimum level for analytical procedures specified in or approved under federal regulations, the minimum level should constitute the quantification level for permits outside the Lake Erie basin.

C. RESOURCE CONSERVATION AND RECOVERY ACT

1. *Hazardous Waste*

The petitioners claim that OEPA avoids enforcing its environmental laws and fails to inspect and monitor activities subject to regulation. Furthermore, the petitioners claim that OEPA abandoned its existing enforcement efforts in favor of the State's Voluntary Action Program (VAP). The January 27, 2000 supplement to the petition includes a table that lists the following installations as examples in which OEPA failed to carry out certain aspects of the RCRA hazardous waste program: Georgia-Pacific Resin in Columbus, the Tremont Sanitary Landfill in Springfield, the Bond Road Landfill in Whitewater Township, the River Valley High School in Marion, AK Steel in Middletown, WTI in East Liverpool, EnviroSAFE in Oregon, Brush Wellman in Elmore, PPG Industries in Circleville, Elano Corporation in Beavercreek, and Worthington Custom Plastic in Warren County. The petitioners also claim that OEPA fails to exercise control over authorized hazardous waste program activities.

Based on U.S. EPA's evaluation of petitioners' claims, a review of the annual audits of Ohio's hazardous waste enforcement program from 1995 through 2000, and an evaluation of the overall

August 30, 2001 Draft Report on Review of Ohio Programs

Ohio RCRA program as well as case-specific information, U.S. EPA has concluded preliminarily that the evidence does not substantiate petitioners' allegations or constitute sufficient cause to warrant commencement of formal withdrawal proceedings. We are requesting an Attorney General's Opinion to clarify the application of the VAP program and its impact, if any, on authorization requirements for permitting and corrective action, accessing information and releasing information.

2. *Solid Waste*

The petitioners claim that Ohio's solid waste program fails to ensure that waste is disposed of in an environmentally sound manner and in compliance with federal law. The petitioners also claim that Ohio fails to close or upgrade existing open dumps in accordance with federal law. Furthermore, the petitioners claim that OEPA lacks the ability to adequately control air emissions, surface water discharges and groundwater contamination from municipal solid waste landfills (MSWLFs). The petitioners list five MSWLFs as examples of alleged failures of the program: the Clarkco Sanitary Landfill in Springfield, the Tremont Sanitary Landfill in Springfield, the ELDA Recycling & Disposal Facility in Cincinnati, the Bond Road Landfill in Whitewater Township and the Rumpke Sanitary Landfill in Hamilton County.

Based on the criteria set forth in the RCRA regulations and U.S. EPA's evaluation of petitioners' claims and the Ohio MSWLF permit program, U.S. EPA has concluded preliminarily that there does not appear to be sufficient substantive information to justify commencing formal withdrawal proceedings to determine whether or not the current Ohio MSWLF permit program meets the minimum federal requirements for an adequate program.

D. GENERAL ENFORCEMENT

U.S. EPA also reviewed the OEPA Office of Legal Services, the Ohio Attorney General's Environmental Division and the Attorney General's Bureau of Criminal Investigation. U.S. EPA obtained an overview of how Ohio's legal offices function and bring enforcement cases, including the types, quantities and results of enforcement activities, and legal perspectives relating to particular programs.

In this general overview, U.S. EPA also looked for multi-media enforcement because the petitioners had asked us to look at the allegations from a multi-media perspective. The federal environmental programs stem from separate federal authorities that do not require a multi-media approach. We found that Ohio does not approach enforcement from a multi-media perspective. Since our authorities do not require a multi-media approach, this does not affect our authorization, delegation and/or approval of Ohio programs.

U.S. EPA's preliminary conclusion is that Ohio agencies initiate, prosecute and conclude a significant number of environmental enforcement cases. In particular, Ohio's criminal

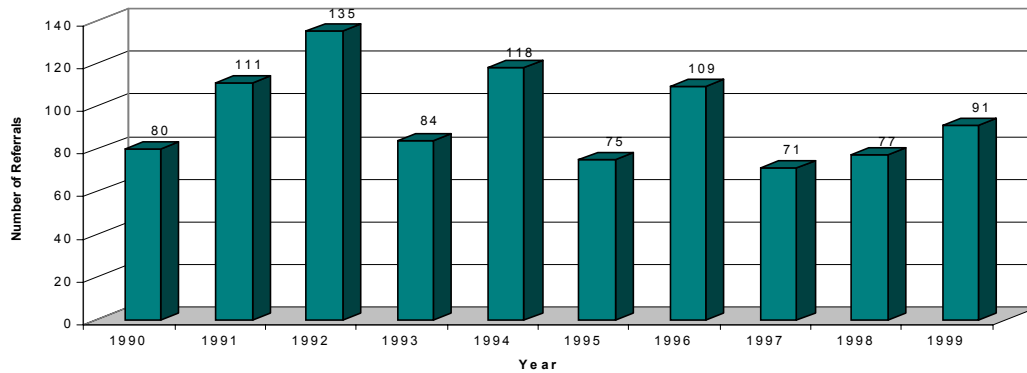
August 30, 2001 Draft Report on Review of Ohio Programs

environmental enforcement program is considered among the best in the nation. Of note, Ohio has administratively and/or civilly enforced against and/or resolved violations at 28 of the 57 facilities mentioned in the petitioners' August 4, 1999 supplement, and has conducted investigations at many of the others. Working in partnership with OEPA, U.S. EPA has enforced against or otherwise addressed most of the remaining facilities that have or have had identified enforcement problems. This is not to say, however, that all violations at all of the listed facilities have been addressed. While either OEPA or U.S. EPA has already addressed certain violations at those facilities, there may be other violations that have not yet been addressed and/or remedied. U.S. EPA preliminary finds that Ohio maintains an active enforcement presence in the environmental programs U.S. EPA reviewed.

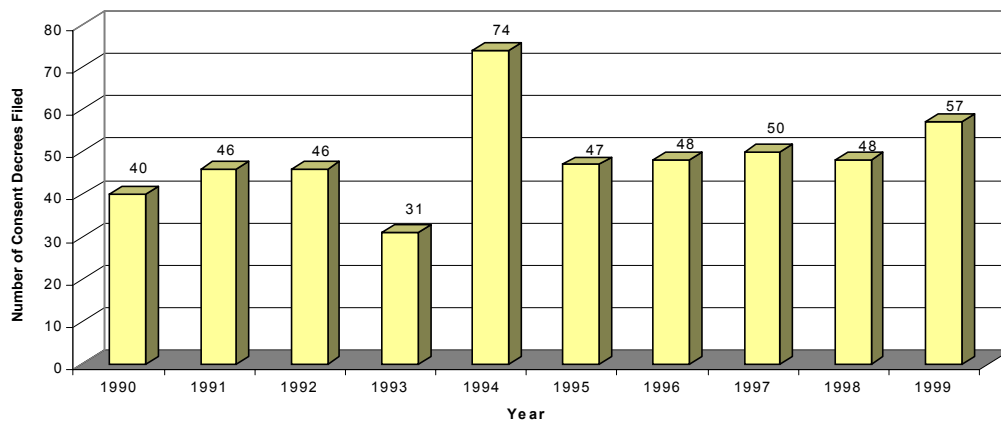
The following graphs and chart provide overview data on Ohio's enforcement of environmental programs.

August 30, 2001 Draft Report on Review of Ohio Programs

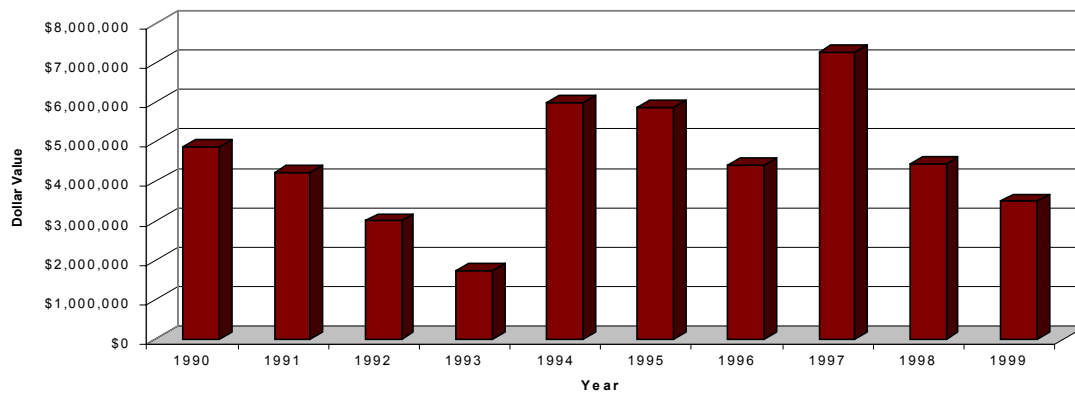
Number of Referrals of Environmental Cases to the Ohio Attorney General 1990 - 1999



Number of Consent Decrees Entered into by the Ohio Attorney General 1990 - 1999 in Environmental Cases



Ohio Attorney General: Dollar Value of Civil Judicial Penalties in Environmental Cases 1990 - 1999



August 30, 2001 Draft Report on Review of Ohio Programs

**Ohio Environmental Criminal Prosecutions 1995 - 1999 :
Total Cases Broken Down by Environmental Program Area**

